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04 UNITED STATES DISTRICT COURT
05 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

06 EVA MIKEL,) CASE NO. C05-1059-TSZ
07)
08 Plaintiff,)
09)
10 v.)
11)
12 JO ANNE B. BARNHART, Commissioner) ORDER OF REMAND
13 of Social Security,)
14)
15 Defendant.)
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22)

12 The Court has reviewed the entire record, including the Administrative Record, the
13 memoranda of the parties, and the Report and Recommendation of United States Magistrate
14 Judge Mary Alice Theiler. It is therefore ORDERED:

15 (1) The Court adopts the Report and Recommendation subject to the following
16 modifications. The Report and Recommendation states that the Ninth Circuit withdrew
17 Edlund v. Massanari, 253 F.3d 1152 (9th Cir. 2001), and substituted an unpublished opinion in
18 its place. Report and Recommendation, docket no. 18, at 13. This is incorrect. Upon
19 rehearing, the Ninth Circuit substituted the amended opinion of Edlund v. Massanari, no. 99-
20 35555, 2001 U.S. App. LEXIS 17960 (9th Cir. Aug. 9, 2001) for its original opinion. The
21 amended opinion remains valid as a published, precedential opinion and continues to be cited
22 as precedent by the Ninth Circuit Court of Appeals. See, e.g., Warre v. Comm'r. of Social

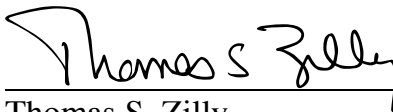
01 Security Admin., 439 F.3d 1001, 1007 (9th Cir. 2006); Connett v. Barnhart, 340 F.3d 871,
02 873 (9th Cir. 2003); Frost v. Barnhart, 314 F.3d 359, 367 (9th Cir. 2002).

03 Although Edlund v. Massanari is valid precedent in the Ninth Circuit, it does not affect
04 the validity of the Report and Recommendation. In Edlund, vocational expert testimony that
05 did not take a claimant's mental impairment into account was held invalid. 253 F.3d at 1159-
06 60. Edlund requires that vocational expert testimony, if used, reflect a claimant's mental
07 impairment. It does not require that vocational expert testimony be used in all cases where a
08 claimant has a mental impairment.

09 (2) The Court orders REMAND of the case for further administrative proceedings
10 as described in the Report and Recommendation; and

11 (3) The Clerk shall direct copies of this Order to all counsel and to Judge Theiler.

12 DATED this 2nd day of May, 2006.

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15 Thomas S. Zilly
16 United States District Judge
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